veyance. *Held*, that the plaintiff's claim is barred. *Kirby* v. *Cowderoy*, 107 L. T. R. 74 (Eng., P. C., June 18, 1912).

The court in the principal case holds that the statutory requirement of possession is satisfied by the conveyance to the mortgagee and the payment of taxes on the property. It is at least doubtful whether a conveyance of lands not in the actual possession of anyone can confer a constructive possession on the grantee. That a mortgage though in form an absolute deed could have this effect is even less reasonable, since a mortgagor usually remains in possession. Furthermore, any possession flowing from the fact of conveyance can at most be only constructive, and it is straining the language of the statute to include such a possession. BRIT. COL., REV. STAT., 1897, c. 123, § 40. An analogy may be drawn to the case of suits to quiet title where actual possession of the plaintiff must be shown even in the case of wild lands. *Cantlin* v. *Holliday-Klotz Land & Lumber Co.*, 151 Mo. 159, 52 S. W. 247. If the mortgagee was not originally in possession, it is difficult to see how he could enter by paying the taxes. This seems to be an evidence of claim of ownership rather than an act of possession. *Pharis* v. *Jones*, 122 Mo. 125, 26 S. W. 1032.

TORTS — DEFENSES — RELEASE OF ONE JOINT TORTFEASOR WITH RESERVATION OF RIGHTS AGAINST OTHERS. — The plaintiff, having brought suit against several defendants jointly liable for injuries sustained in consequence of their negligence, gave a release to one of the defendants, reserving his rights against the others. *Held*, that the release operates as a bar to the suit against the co-defendants. *Flynn* v. *Manson*, 126 Pac. 181 (Cal.).

In the analogous case in contracts where a release is given by an obligee to one of several joint obligors, reserving rights against the others, it is well settled that the release will be interpreted as a covenant not to sue the party to whom the release is given and does not bar action against the others. *Dickinson* v. *Metacomet National Bank*, 130 Mass. 132; *Benton* v. *Mullen*, 61 N. H. 125. Though the authorities are in conflict, the modern tendency has been similarly to interpret such a release of one of several joint tortfeasors. *Edens* v. *Fletcher*, 79 Kan. 139, 98 Pac. 784; *Walsh* v. *New York Central & H. R. R. Co.*, 140 N. Y. App. Div. 1, 124 N. Y. Supp. 312. The opposite result reached in the principal case seems less desirable, because it fails to carry out the intent of the parties. See 16 HARV. L. REV. 529; 22 HARV. L. REV. 458.

WATERS AND WATERCOURSES — NATURAL LAKES AND PONDS — ENCROACHMENT UPON HIGHWAY AND LANDS BEYOND: TITLE TO LAND UNDER WATER BETWEEN HIGHWAY AND NEW SHORE LINE. — The water of Lake Erie by gradual erosion washed away a public highway along the shore and also a portion of the land belonging to the plaintiff's lessor which bordered upon the highway. The crown leased to the defendant all the land under the waters of Lake Erie in front of the property of the plaintiff's lessor. The defendant entered and drilled for oil in the land under water between the original boundary of this property and the new shore line. *Held*, that the plaintiff may recover in an action of trespass. *Volcanic Oil & Gas Co.* v. *Chaplin*, 22 Ont. Wkly. R. 800.

The crown has title to the land under the water on the Canadian side of the Great Lakes. *Attorney General* v. *Perry*, 15 U. C. C. P. 329. And the owner of land beneath waters ordinarily gains title to land of a riparian owner gradually washed away and covered by the encroachment of the waters. *In the Matter of Hull & Selsby Ry.*, 5 M. & W. 327; *Widdecombe* v. *Chiles*, 173 Mo. 195, 73 S. W. 444. It is well settled that when land is bounded by a public highway on the shore riparian rights do not vest in the owner of such land. *Cook* v. *City of Burlington*, 30 Ia. 94; *Schools* v. *Risley*, 10 Wall. (U. S.) 91. But by the great weight of authority when water slowly encroaching reaches

the boundary of an inland proprietor he becomes subject to loss by erosion, and has the right to gain by accretion. *Welles* v. *Bailey*, 55 Conn. 292; *Foster* v. *Wright*, 4 C. P. D. 438. The court in the principal case, though accepting the general principle of loss by erosion, holds that when the boundary to property is made fixed and definite, as it is in the case of property not originally riparian, it will not change with the movements of the shore line. This view finds support when at the time of the conveyance of the property an intention was clearly shown by the terms of the conveyance or the nature of the waters that riparian rights should be withheld from the land. *Cook* v. *McClure*, 58 N. Y. 437; *Gilbert* v. *Eldridge*, 47 Minn. 210, 49 N. W. 679. There was no such intention in the principal case and it is submitted that the opposite result would be preferable.

WATERS AND WATERCOURSES — PERCOLATING AND SURFACE WATERS — EXTENT OF RIGHTS. — The plaintiff collected artesian, spring, and seepage water from his land into a pond. In conveying this water by ditches to different parts of the land considerable quantities percolated through the soil. This artificially created percolating water was conveyed into a ditch running along a right of way belonging to the defendant, who used the water for irrigating purposes for nine years. *Held*, that the defendant acquired no right to the water. *Garns* v. *Rollins*, 125 Pac. 867 (Utah).

According to the English rule, a landowner can acquire no rights in the flow of percolating waters from other lands to his own, since the owner of the soil to whom they belong may dispose of them as he pleases. *Chasemore* v. *Richards*, 7 H. L. Cas. 349; *Frazier* v. *Brown*, 12 Oh. St. 294. The lower court in the principal case, proceeding on the erroneous ground that the waters in question were natural percolating waters, refused to apply the English doctrine. Instead, the reasonable use doctrine, adopted by a majority of American courts, was followed, giving an adjoining landowner a vested right in the flow of such percolating waters as are not necessary to the reasonable use of another's land. *Katz* v. *Walkinshaw*, 141 Cal. 116, 74 Pac. 766; *Smith* v. *City of Brooklyn*, 18 N. Y. App. Div. 340, 46 N. Y. Supp. 141. See 16 HARV. L. REV. 295. The water in question, however, was not naturally percolating, but merely surface or waste water; and on this ground the upper court in accordance with all past authority held that an adjoining landowner could acquire no rights in its flow from the land of another. *Broadbent* v. *Ramsbotham*, 11 Exch. 602. See *Frazier* v. *Brown*, *supra*, 300. It is submitted that the argument of social utility, which was mainly responsible for the introduction of the reasonable use doctrine as to percolating waters, is equally applicable to surface waters. See 1 WIEL, WATER RIGHTS IN THE WESTERN STATES, 3 ed., § 59.

BOOK REVIEWS.

THE UNDERLYING PRINCIPLES OF MODERN LEGISLATION. By W. Jethro Brown. London: John Murray. 1912. pp. xx, 331.

Dr. Brown has essayed in his latest book a social philosophical theory of law and of law-making. Apart from his method of accomplishing the task, his undertaking it at all is an event of capital importance, since it evidently marks the swinging into line of English jurists in the general movement toward philosophical jurisprudence. But his method has significance also. On the Continent, the return to a philosophy of law came by way of reaction from the historical school, and yet chiefly from a development of that school. Kohler's